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IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO DEFENDANT'S
MOTION *IN LIMINE* TO PROHIBIT
PROSECUTORIAL MISCONDUCT

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion *in Limine* to Prohibit Prosecutorial Misconduct and requests not only that the request be denied but that defense counsel be admonished for wasting the limited resources of all parties on such an unnecessary pleading.

Defendant offers numerous statements made by a the prosecutor as evidence of improper arguments; however, these comments were not improper given the circumstances under which they were made. As to any comments made by the undersigned counsel during the *Bocharski* resentencing, on automatic appeal, the Arizona Supreme Court stated "[o]ur thorough review of the record discloses no action by the prosecutor that we regard as

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1 constituting misconduct." *State v. Bocharski, (Bocharski II)*, 218 Ariz. 476, 492, 189 P.3d 403,
2 419(2008).

3 As the United States Supreme Court long ago recognized, the prosecutor

4 is the representative not of an ordinary party to a controversy,
5 but a sovereignty whose obligation to govern impartially is as
6 compelling as its obligation to govern at all; and whose interest,
7 therefore, in a criminal prosecution is not that it shall win a case,
8 but that justice shall be done. As such, he is in a peculiar and
9 very definite sense the servant of the law, the twofold aim of is
10 that guilt shall not escape or innocence suffer. He may
11 prosecute with earnestness and vigor-indeed, he should do so.
12 But, while he may strike hard blows, he is not at liberty to strike
13 foul ones. It is as much his duty to refrain from improper
14 methods calculated to produce a wrongful conviction as it is to
15 use every legitimate means to bring about a just one.

16 *Berger v. United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 633 (1935).

17 Arizona codified the special responsibilities of a prosecutor in the *Rules of the Arizona*
18 *Supreme Court*, ER 3.8 and the undersigned prosecutor is well-versed with those
19 responsibilities. Whereas the prosecutor does not need an Order from this Court to
20 acknowledge his is bound by the special responsibilities assigned to his position, Defendant's
21 request for such an Order should be denied.

22 RESPECTFULLY SUBMITTED this 4th day of
23 January, 2010.

24 Sheila Sullivan Polk
25 YAVAPAI COUNTY ATTORNEY

26 By: Dennis M. McZane
for Joseph C. Butner
Deputy County Attorney

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COPIES of the foregoing delivered this
4th day of January, 2010 to:

Honorable Thomas J. Lindberg
Division 6
Yavapai County Superior Court
(via email)

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